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| 10/529,599 | 03/30/2005 | Bernd Rumpf | 502901-349PUS | 1676 |

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| EXAMINER |
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WEINSTEIN, LEONARD J

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| ART UNIT | PAPER NUMBER |
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3746

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11/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|---|-------------------------------------|--|
| Office Action Summary | Application No. 10/529,599 | Applicant(s) RUMPF, BERND | |
| | Examiner LEONARD J. WEINSTEIN | Art Unit 3746 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 30, 2010 has been entered.
2. The examiner acknowledges the amendments to claim 1, and notes that claim 5 has been canceled.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Szwargulski et al. US 4,974,570. Szwargulski teaches all the limitations for a feed unit (as shown in figure 1) including:

[claim 1] a baffle 52 having a first chamber (see figure 2 – portion of element 37 within element 46; “37 w/i 46”; col. 3 ll. 55-62) for collecting the fuel, a fuel pump 43 for sucking up the fuel, a fuel-pump suction opening 46 arranged in a vicinity of a bottom (defined rim or edge of element 46; “46-bottom”) by the bottom of the first chamber (37 w/i 46) of the baffle 46, a bottom valve 40 arranged proximate the bottom (46-bottom) of

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the first chamber (37 w/i 46), the bottom valve 40 permitting a flow of fuel into the first chamber (37 w/i 46) (col. 5 ll. 30-34) and preventing a flow of fuel out of the first chamber (37 w/i 46), and an annular second chamber (as defined elements 50, 51, 52, and 53 with the annular sections 51 and 52 of element 50 above the plate element 48 and below the screen element 55 define a small chamber that the surrounds the outer wall of element 46 and is partitioned by three rib elements 53; col. 4 ll. 50-53) surrounding and connected to the first chamber (37 w/i 46) via a throttle valve 54, wherein a volumetric flow of fuel that is restricted by the throttle valve 54 will be smaller than the volumetric flow fed by the fuel pump (because once fluid is fed by the pump it will be under positive pressure whereas the fuel coming into chamber (37 w/i 46) via valve 54 is under pressure by gravity and is not positively displaced);

[claim 2] wherein the second chamber (50, 51, 52, 53) is manufactured integrally with the baffle 52 (see figure. 2 - element 50 surrounds element 46 and is fixed to it via flange seal member 56);

[claim 3] wherein the first (37 w/i 46) and second (50, 51, 52, 53) chambers are arranged and the same height (see figure 2 wherein at least a portion of the element 46 overlaps the entire height of element 50 and element 55 delimits the top of element 50 and is in close proximity to the upper terminal end of the element 46 therefore under at least two interpretations (1) at least a portion of the both chambers are located at the same vertical location and (2) the top of the element 46 is at relatively the same height as the top of element 50 as defined by element 55, the chambers as defined are at the same height);

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[claim 4] wherein the throttle valve 54 is arranged in a wall 51 which is common to the first chamber (37 w/i 46; element 51 surrounds and abuts the outside of element 46 and valve 32 is disposed within a outwardly extending horizontal portion of the base or bottom of the element 50) and the second chamber (50 , 51, 52, 53);

[claim 6] wherein the second chamber (50, 51, 52, 53) is arranged within the baffle 52 and a common wall (inner surface of element 51 that tapers downward) between the first chamber (37 w/i 46) and the second chamber (50, 51, 52, 53) is lower than an outer wall (outermost surface of element 52 that engages element 49) of the baffle 52 (as the top of the inner surface of element 51 has a downward tapered edge that is just slightly at a lower level than the top the outer wall of element 52);

[claim 7] and wherein the throttle valve 54 is configured as an opening with a designated cross section (wherein the valve unit 54 includes port opening in element 48 which will have a cross section as shown in figure 6 by the dotted lines; col. 5 ll. ll. 58-59).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szwargulski et al. US 4,974,570, as applied in section 4 above. Szwargulski discloses the claimed invention including a valve throttling a volumetric flow which flows from a second chamber, except Szwargulski does not disclose a volumetric flow in which a level is equalized in three to five minutes after a fuel pump has stopped. The time needed to equalize a level of fluid in a first and second chamber is a results effective variable with the results being a fluid level equalizing three to five minutes after a fuel pump has stopped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a feed unit capable of equalizing a fluid level within two chambers of a fuel tank within 3 to 5 minutes after a pump has been stopped, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szwargulski et al. US 4,974,570, as applied in section 4 above. Szwargulski discloses the claimed invention including a second chamber defined by the annular space between elements 51 and 52. This volume is vertically delimited by elements 48 and 55. The annular space defined between elements 51 and 52 is less than the total volume that would be defined by the just the baffle 52 since that volume includes the

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volume defined by the element 46. The volume of the annular spaced defined between the sections of elements 52 and 51 is equal to the volume defined element 52 minus the volume defined by element 46 (or the outer wall of element 51 towards the longitudinal axis of the pump). Thus the volume defined by element 52 is greater then the volume defined between elements 52 and 51, but Szwargulski does not explicitly disclose the ratios between the diameters of either elements 46 and 51 and the diameter of element 52. The values of these diameters, or at least a ratio between them, would be necessary to determine and compare the ratio of the volumes defined by element 52 and the volume between element 52 and element 51. However since it is apparent that the volume defined by element 52 would be larger than the volume defined between elements 52 and 51 (and thus the volume of the second chamber defined there between), Szwargulski discloses the general conditions of the claimed invention except for the express disclosure of a second chamber having a volume of approximately 10-20% of a baffle volume. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a second chamber comprising approximated 10-20% of a baffle volume, since the claimed values are merely an optimum or workable range. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

9. The reference of the Szwargulski has been re-interpreted in view of the applicant's amendments and a new grounds for rejection has been formulated in view of

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the this reference. Applicant's arguments with respect to claims 1-4 and 6-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEONARD J. WEINSTEIN whose telephone number is (571)272-9961. The examiner can normally be reached on Monday - Thursday 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leonard J Weinstein/
Examiner, Art Unit 3746